THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

THE HON'BLE SMT. JUSTICE T.RAJANI

CIVIL REVISION PETITION No.1602 of 2017

27.03.2017

Between:

Additional Chief Engineer (CMC),
Bangalore Water Supply & Sewerage Board,
Bangalore and others

..Petitioners

and

M/s. SEW AIPPL – Joint Venture,
Hyderabad and others

..Respondents

Counsel for the petitioners: Mr.S.S.Naganand, senior counsel
for Mr.Mir Masood Khan

Counsel for respondent No.1: Mr.D.Prakash Reddy, senior counsel
for Mr.Avinash Desai

Counsel for other respondents: --

The Court made the following:

ORDER: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

This civil revision petition arises out of order, dated 28.12.2016, in Arb.O.P.No.3149 of 2016 on the file of XI Additional Chief Judge, City Civil Court, Hyderabad.

2. We have heard Mr.S.S.Naganand, learned senior counsel representing Mr.Mir Masood Khan, learned counsel for the petitioners, and Mr.D.Prakash Reddy, learned senior counsel representing Mr.Avinash Desai, learned counsel for respondent No.1.

3. The dispute revolves around termination of sewerage contract and encashment of bank guarantees by the petitioners. Respondent No.1 filed arbitration O.P.No.3149 of 2016 in the Court of XI Additional Chief Judge, City Civil Court, Hyderabad, wherein an *ad interim* order was granted staying encashment of bank guarantees and also suspending termination of contract. The main grievance of the petitioners is that though the Court below has no territorial jurisdiction to entertain the arbitration O.P., it not only entertained the O.P. but also granted unusual and extraordinary interim order, whereby, it not only prevented the petitioners from encashing bank guarantees but also held up the further work, thereby affecting the public interest.

4. Mr.S.S.Naganand, learned senior counsel representing Mr.Mir Masood Khan, learned counsel for the petitioners, has submitted that as regards bank guarantees, out of four, three have already been encashed and that one bank guarantee remains to be encashed. He has further argued that even if respondent No.1 succeeds in the litigation, it may be entitled to recover damages for the alleged termination of contract and that it cannot prevent the petitioners from

executing the balance work, as such a course would cause immense prejudice to the public interest.

5. Mr.D.Prakash Reddy, learned senior counsel representing Mr.Avinash Desai, learned counsel for respondent No.1, has submitted that so far, the amount under any of four bank guarantees has not been paid to the petitioners. As regards the submission of the learned senior counsel for the petitioners, that all that respondent No.1 would be entitled to is only damages for the alleged termination of contract, the learned senior counsel has submitted that in the event of entrustment of the balance work to a third party, the petitioners are likely to claim higher amount than what is actually spent under the risk purchase clause.

6. A perusal of the order under revision shows that the same is *ad interim* in nature passed without hearing the other side. Therefore, we have expressed our disinclination to interfere with such order at this stage and proposed that the Court below would be directed to dispose of the *interim* application in the earliest possible time. At the hearing, consensus is reached between the two learned senior counsel to the effect that *status quo* as on today may be maintained with respect to the encashment of bank guarantees and the petitioners may be left free to entrust the balance work to a third party, without prejudice to the right of respondent No.1 to question its liability that may be fastened on it towards expenditure incurred on execution of balance work by such third party.

7. In view of the above understanding reached between the parties through their counsel, we dispose of the Civil Revision Petition in the following terms:

(i) The Commercial Court, Hyderabad, to which the matter is stated to have been transferred, is directed to dispose of Arb.O.P.No.3149 of 2016 as expeditiously as possible and not later than 30.06.2017, after hearing both sides;

(ii) *Status quo* as on today shall be maintained with respect to encashment of the bank guarantees;

(iii) The order under revision to the extent of suspending termination of contract is suspended, to enable the petitioners to proceed with execution of the balance work, without prejudice to the right of respondent No.1 to question the quantum of the liability that may be imposed by the petitioners towards expenditure incurred in getting the balance work executed by the third party.

8. As a sequel to disposal of the C.R.P., C.R.P.M.P.No.2121 of 2017 filed by the petitioners for interim relief shall stand disposed of as infructuous.

C.V.NAGARJUNA REDDY, J

T.RAJANI, J

27th March, 2017
GHN